

## FEDERAL COMMUNICATIONS COMMISSION

Comments of Communications Central Inc.

CC Docket No. 96-128

Filed August 26, 1997

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should continue to be based on shares of toll revenues. However, as an alternative, the Commission could use reliable data on 800 revenues, if such data is available.

V. RETROACTIVE ADJUSTMENTS TO INTERIM COMPENSATION  
LEVELS AND OBLIGATIONS ARE NOT IN THE PUBLIC INTEREST

A. Retroactive Adjustments Are At The Discretion  
Of The Commission In Assessing Equitable Factors

Any potential retroactive adjustments to the interim compensation levels due to CCI and other independent PSPs should be at the discretion of the Commission, weighing the various equitable factors apparent in the existing dial around payment obligations. In this vein, there are three overriding equity issues on which the Commission should focus:

- \* The IXCs have had a free ride for years. Payphone providers have provided no-cost outlets to enable the IXCs to receive substantial revenue-generating traffic in the form of dial around calling.
- \* Numerous carriers have not paid under the existing obligations. Certain carriers have simply refused to comply with the Commission's orders and have failed to pay payphone providers. Significant legal resources are being expended in an attempt to force payment.
- \* Compensation is finally being received for subscriber 800 calls, which are more numerous than access code calls. PSPs have foregone many years of such compensation, which is not recoverable.

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Fundamentally, since no change is required in the market-based rate for interim dial around compensation, no retroactive adjustments are appropriate. Further, even if the Commission derives a different dial around compensation level, equities would dictate against the application of retroactive adjustments, since PSPs have significantly relied upon the interim compensation amounts from a business and cash flow perspective.

B. The Commission Should Not Further Disrupt Reasonable  
Business Expectations For CCI And The Payphone Industry

CCI's business has been substantially disrupted as a result of the Court's remand of the level of dial around compensation. Specifically, CCI's pending merger and acquisition by PhoneTel Technologies Inc. was not successfully completed due, in large part, to the uncertainty surrounding the amount of dial around compensation that CCI and PhoneTel could expect to receive, now and in the future. This made it impossible to secure an appropriate level of debt financing to complete the transaction. The transaction was further complicated by certain IXCs who were craftily using this uncertainty as reason to delay dial around payments or not pay at all. For example, Sprint has yet to pay its share of the 1st Quarter 1997 interim obligations. In addition, Vartec Telecom has sent letters to PSPs stating that it will not pay pending the Commission's review and determination under the Court's remand.

It is incredibly ironic that the larger carriers have argued to the Court that if the Commission's existing dial around compensation plan is left in place, it will be "extremely

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disruptive" to their operations.<sup>32</sup> Such a disingenuous statement smacks at the heart of the issue. The larger carriers know how crucial dial around payments are to CCI and other independent PSPs. Carriers have many other revenue sources on which to depend. CCI and other independent PSPs do not.

Further, the large carriers are well aware that a number of them have not performed under existing obligations to pay dial around compensation, even prior to the Court's remand. At the same time, several of the carriers are currently collecting significant revenue from end users under the premise of recouping all or part of what the Commission has required them to pay to PSPs -- yet they refuse to perform in accordance with the Court's opinion and the Commission's direct clarification in its Notice that the compensation obligations remain in full force and effect.

In fact, certain of the carriers are being unjustly enriched under the guise of collecting additional revenue today from its customers to meet their dial around obligations. Those are the same carriers that are arguing that the Commission's existing plan, if left in place, will be "extremely disruptive" to their operations. The disruption they are describing may relate more to the accounting for the additional revenues they have obtained -- and how to inform their customers that the extra money collected from them is not necessarily being used for the purposes for which it is being collected.

Given the continuing reduction in revenues from long distance calls from payphones and

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<sup>32</sup>Motion for Clarification at 10.

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increasing costs due to, among other things, municipal ordinance compliance, timely and accurate receipt of dial around revenue is the lifeblood of a PSP's existence. Promoting any greater uncertainty in the payphone industry does little to achieve the stated goal of promoting the widespread deployment of payphones for public use and in meeting the intent of Congress.

For CCI, the issue is clear. As a publicly-held company, it is essential that CCI possess the ability to attract capital and provide our shareholders with a reasonable return on their investment. Though the regulatory process generally is filled with uncertainty, on both the federal and state levels, any retroactive adjustments to interim dial around compensation payments would be devastating to CCI from both a financial and planning point of view and is inconsistent with the company's ability to continue to maintain and provide high quality payphone service to its customers.

## VI. CONCLUSION

The Commission's mandate is to ensure fair compensation for all dial around calls from payphones. In meeting its mandate, and in accordance with the Court's remand, the Commission is legally justified in retaining a market-based compensation default rate. Under no circumstances is the Commission required to set a default rate based on cost, and certainly not on a marginal basis. Even so, CCI's current cost data proves that there is little difference in the cost of a local coin call versus a dial around call. Such data provides additional evidence on which the Commission may retain the \$.35 market-based default rate. Any cost differences should merely

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be used as an additional factor in legally justifying a market-based rate for dial-around calls.

Given the increase in dial around calls, the interim compensation level must be revised, based on increased dial around call levels, to \$54.95 per payphone per month. Under any scenario, continued timely and accurate receipt of fair dial around compensation is absolutely essential to CCI's survival and the widespread deployment of payphones for public use in accordance with the goals of Section 276.

Respectfully submitted,

COMMUNICATIONS CENTRAL INC.



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